

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



Legal Counsel Division

October 20, 2004

Mr. Absalom Jordan
Treasurer, ANC 8D
4601 Martin Luther King Jr. Avenue, S.W.
Washington, D.C. 20032

Re: Legal Interpretations to Advisory Neighborhood Commissions (ANCs), Asbestos Abatement Permits, Office of the Attorney General for the District of Columbia (OAG) Attorney Information

Dear Commissioner Jordan:

This is in response to your letters dated July 17 and August 20, 2004 to this Office. The July 17, 2004 letter queries our standards for providing legal interpretations to ANCs, and questions a previous interpretation by this Office regarding Notice to ANCs of asbestos abatement permitting by the Department of Health (DOH). Your August 20, 2004 letter seeks statistical information concerning attorneys employed by the Office of the Attorney General for the District of Columbia.

The July 17, 2004 letter is directed to Attorney General Robert Spagnoletti and addresses his testimony of April 21, 2004 to the Council's Judiciary Committee -- specifically his statements regarding this Office's obligation to provide legal interpretations to ANCs. You ask for clarification of those statements including: "(a) the meaning of the words 'interpretation,' 'opinion,' 'advice' and 'appropriate'; (b) the meaning of the word 'shall' as used in the text of section 1-309.12(d)(3) of the D.C. Official Code (2001); (c) the meaning of 'formal opinion'."

Section 15(d)(3)(A) of the Advisory Commissions Act of 1975, effective October 10, 1975, D.C. Law 1-21, as amended by the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000 (collectively, the ANC Act), effective June 27, 2000, D.C. Law 13-135, D.C. Official Code § 1-309.12(d)(3)(A) (2004 Supp.), provides:

The Mayor shall provide assistance to the Commissions in the following areas: (A) Legal interpretations of statutes *concerning or affecting* the Commissions, or of *issues or concerns affecting the Commissions*. These

interpretations are to be obtained from the [Office of the Attorney General for the District of Columbia] and may be requested directly by any *Commission*. (Emphasis added.)

Accordingly, this Office supplies to ANCs “legal interpretations of statutes” and legal interpretations of “issues or concerns affecting the Commissions.” Whether such interpretations may be characterized as advice or opinion is, in this context, a semantic difference and of no consequence. The interpretations are binding with regard to ANC conduct, and may be relied upon by ANCs for such purposes. As for a definition of the word “shall,” in the context of the ANC statute, we assume you are asking whether the term “shall” means that this office must provide the assistance discussed in § 1-309.12(d)(3)(A). It is not necessary to determine whether such language creates a mandatory obligation, or is merely directory in nature because this Office is committed to providing, and does in fact provide, such assistance whenever appropriate.

With regard to what constitutes an “appropriate” request for a legal interpretation, we most recently addressed this in our last letter to you dated August 16, 2004. There, we declined to review various questions you presented concerning the Metropolitan Police Department’s General Orders and rulemaking authority because you did not meet the threshold requirement of showing that the issues “concerned” or “affected” the Commission. We also reminded you that requests for a legal interpretation should come from the Commission, rather than individual Commissioners, unless acting on behalf of the Commission. Those are at least two examples of appropriateness.

You next assert that a legal interpretation issued by this Office on April 23, 2004 to Kenneth B. Campbell, General Counsel, Department of Health (DOH) (attached hereto), is incorrect. That memorandum answered the query whether DOH must give thirty-day notice to ANCs pursuant to sections 13(b) and (c) of the ANC Act, D.C. Official Code § 1-309.10(b) and (c), prior to issuance of asbestos abatement permits, concluding that such notice was not required. That memorandum, informed by several cases from the D.C. Court of Appeals (citations omitted) discussed therein, analyzed the ANC notice provisions and concluded that the permit application process for such permits (which involved no discretionary elements), did not meet the test for whether the action was of appropriate significance.

Nonetheless, you cite a May 31, 2001 letter from this Office to David J. Bardin, ANC 3F (attached hereto), which you claim is inconsistent with our conclusions in the April 23, 2004 memorandum. There is no inconsistency. The May 31, 2001 letter does not address the issue of asbestos abatement permits, but instead notice of construction and raze permits issued by the Department of Consumer and Regulatory Affairs (DCRA). This is an important difference. Unlike the more general notice activity listed in section 13(c)(1) of the ANC Act, D.C. Official Code § 1-309(c)(1), construction and demolition permits are governed by separate notice provisions which appear in section 13(c)(3) of the ANC Act, D.C. Official Code § 1-309(c)(3), and which expressly require DCRA to provide ANCs twice each month with a list of current applications for construction and demolition permits. It does not apply to other permits. If anything, this separate listing suggests that the Council believed such permits would not be covered in subsection (c)(1), but still wanted ANCs to have notice of proposed construction and demolition

projects – actions that are materially different from asbestos abatement. As a result, that letter is not applicable to any analysis concerning asbestos abatement permits and we stand by our earlier conclusions, which we believe to be sound.¹

Lastly, you request certain information concerning employees of the Office of the Attorney General for the District of Columbia, including a list of all employees by name, grade, gender, race and ward of residence. We have attached the information you request, excepting the ward of residence of those employees who reside in the District of Columbia and the race and gender of individual employees. Instead, we have attached a percentage break-down of OAG attorneys by race and gender, as well as a compilation of attorneys by grade.

Sincerely,

ROBERT J. SPAGNOLETTI
Attorney General

/S/

RJS/dps

Attachments

(AL-O4-497)

¹ We decline your request for an itemized list of those matters for which the thirty-day notice does not apply. It would be nearly impossible to predict the many matters of government that arise each day that would not require such notice. Moreover, as demonstrated by this and other letters by this Office, the analysis can be complex and is best accomplished on a case by case basis.